



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
TELEPHONE (916) 445-6450
FAX (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

KATHLEEN CONNELL
Controller, Sacramento

JOHN CHIANG
Acting Member
Fourth District, Los Angeles

E. L. SORENSEN, JR.
Executive Director

May 14, 1997

Mr. S--- L. J---
S--- J--- C--- Services
XXX --- Avenue
--- ---, CA XXXXX

Account No. SR -- XX-XXXXXX

Dear Mr. J---:

This is in reply to your April 14, 1997 letter regarding the application of sales tax to your charges for artwork. You have provided the following facts:

“I am a graphic artist and creative services consultant, dealing mostly in advertising.

“While there may be times that I will provide my clients with a printout or hand-drawn layout or design, I find that most requests these days are for computer produced design delivered as digital information.”

Enclosed is a copy of Sales and Use Tax Regulation 1540, Advertising Agencies, Commercial Artists and Designers. The regulation provides at subdivision (c):

“The tax applies to the entire amount charged by commercial artists or designers for items of tangible personal property such as drawings, paintings, designs or sketches transferred to the client, whether or not the property is suitable for display or is useful for actual reproduction by photo-mechanical or other processes.

“Tax does not apply to separate charges for preliminary art as defined in (b)(4)(A).”

Tax applies to your charges to a client for artwork whether you transfer the artwork on paper or a computer diskette or tape.

If you transfer artwork to the client merely by modem, and do not transfer the artwork in any form of tangible personal property, tax does not apply to your charge for that transfer of digital information. Similarly, if you create artwork in digital form and operate the client's

computer to transfer the artwork into the memory of the client's computer, you do not thereby transfer tangible personal property to the client. In that case, you must actually operate the customer's computer equipment to transfer the artwork into the computer's memory. If you transfer the artwork to the client in any tangible form such as printed copies or diskettes, tax applies to your charge.

You sent a copy of a form titled "Statement of Business Protocol for Sales Tax Purposes," which you intend to have a client complete. By signing the statement, the client would agree that you would handle your layout or design work in the following manner. Projects completed on your computer would be copied onto to a digital storage file format such as "zip, syquest, floppy disc (or via internet)." You will transfer the file to the client's premises and transfer the file of digital information onto the client's computer system. You would then remove the original disk, which will remain in your possession at all times. The copied file on the client's computer would then become the client's property which you or the client may then review, alter, or correct, if the client requests. The client may then manufacture tangible, hard copy prints of the file.

If you perform the work as described above, your transfer of the digital file to the client would not be a transfer of tangible personal property, and your charge would not be subject to sales tax.

For audit purposes, we urge that, for each job you perform as described, you obtain and retain a purchase order describing the work you perform and a copy of the invoice for the charges represented by the purchase order to document the nontaxable transfer of artwork to the client's computer.

We hope this answers your question; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Enc.

cc: --- --- District Administrator - --